

MTSA Regulations found at 33 CFR Subchapter H
Part 105--Facilities

Q. What facilities are affected by 33 CFR Part 105?

Ans. The regulations found in 33 CFR Part 105 apply to:

- Any U.S. facility subject to 33 CFR parts 126, 127, or 154.
- Facilities that receive vessels subject to SOLAS, 1974, chapter XI
- Facilities that receive foreign cargo vessels greater than 100 GRT
- Facilities that receive vessels certificated to carry more than 150 passengers, except those vessels not carrying, embarking, or disembarking passengers at the facility
- Facilities that receive U.S. cargo vessels greater than 100 GRT, subject to 46 CFR Chapter I, Subchapter I, except facilities that only receive commercial fishing vessels inspected under 46 CFR part 105
- Barge fleeting facility that receives barges carrying, in bulk, cargoes that are regulated by 46 CFR Chapter I, Subchapters D or O, or Certain Dangerous Cargoes. See 33 CFR 105.105 and NVIC 03-03.

Q. What is the impact to a facility owner/operator who is subject to the MTSA regulations of 33 CFR Part 105 and who fails to submit a required facility security plan to the Coast Guard?

Ans. A facility owner and/or operator subject to the MTSA regulations of 33 CFR Part 105 is required to submit a completed assessment report with a facility security plan to the Coast Guard by 31 December 2003. Failure to submit the assessment report and facility security plan by December 31, 2003 is a violation of the MTSA regulations and may result in a civil penalty against the owner/operator of the facility. Under the regulations, the Coast Guard Captain of the Port (COTP) may impose civil penalties that range up to \$25,000.00 per violation of the MTSA requirements. After the July 1, 2004 deadline, non-compliant operators are subject to having their operation shut down until an approved security plan is in place. See 33 CFR 105.310, 33 CFR 105.410, 33 CFR 101.415 and NVIC 03-03.

Q. How can an owner or operator obtain an extension to the December 31, 2003, deadline for submission of a Facility Security Plan (FSP)?

Ans. The regulations do not allow the FSP submission deadline to be extended. Owners and operators are required to submit an FSP by the deadline of December 31, 2003. If an FSP is received with a postmark later than 31 December 2003, the legal submission deadline will have been missed.

Owners and operators of vessels to which these regulations apply who have not submitted a VSP by December 31, 2003, should immediately contact the local

Coast Guard Captain of the Port. Anyone not complying with the requirements of 33 CFR Part 105 will be subject to civil penalties and may be subjected to more stringent actions after 1 July 2004. See 33 CFR 101.415 and Navigation and Vessel Inspection Circular 03-03.

Q. What is the process for submission and approval of a Facility Security Plan (FSP)?

Ans. On or before December 31, 2003, the owner or operator of each facility currently in operation must submit a completed Facility Security Assessment (FSA) report, one copy of their FSP, and a letter certifying that the FSP meets applicable requirements of this Part. The preferred method for submission is by email to the National Facility Plan Review Center (NFPRC) at NFSPPRC@BV.COM. Emailed documents must be sent in a password protected, zipped document. After emailing the document, the sender must call 1-866-377-8727 to confirm receipt and to provide the password for the document.

Other delivery methods may also be used such as U.S. Postal Service first class mail, regular parcel post, or by a delivery service, i.e. Federal Express, UPS, etc.). The FSP documents may be mailed in an electronic (CD) or paper format. Electronic versions (CD) should be sent by a delivery service to avoid radiation processing of the documents. All plan documents delivered via commercial carrier should be stamped with the Sensitive Security Information (SSI) warning statement and delivered using the SSI transmission procedures outlined in NVIC 9-02 Change-1. The outside of the document mailer is not to be marked with the SSI warning statement. It is strongly recommended that a Return Receipt be requested. The addressee label for carrier delivered documents is:

Black & Veatch Special Projects Corporation
Mailstop Q6, Attn: Security Officer
6601 College Boulevard
Overland Park, Kansas 66211.

Should an owner or operator submit their FSP documents directly to a cognizant COTP, the documents will be immediately forwarded by the COTP to the National FSP Review Center for processing.

If the owner or operator intends to operate under an approved Alternative Security Program (ASP), each facility must submit a letter via one of the options listed above, indicating which approved ASP the owner or operator intends to use and a completed Coast Guard Vulnerability and Security Measures Summary Form CG -6025. See 33 CFR 105.310, 33 CFR 105.410, and NVIC 03-03.

Q. What is the Alternative Security Program (ASP) and who is eligible to participate?

Ans. The Alternative Security Program (ASP) means a third-party or industry organization developed standard that the Coast Guard Commandant has determined provides an equivalent level of security to that established by 33 CFR Subchapter H. See 33 CFR 101.105

A facility owner or operator may use an Alternative Security Program (ASP) approved under 33 CFR Part 101.120 if the ASP is appropriate to that facility and the ASP is implemented in its entirety.

Q. What is the process for submission and approval of the Alternative Security Program (ASP)?

Ans. A maritime industry organization electing to use the facility ASP option, on or before December 31, 2003, must complete and submit the required information for review and approval to the Commandant (G-MP). See 33 CFR 101.120 (c) and 33 CFR 105.410.

A facility owner or operator intending to operate under an approved facility ASP must, on or before December 31, 2003, submit a letter signed by the facility owner or operator, to the cognizant CG COTP or the National Facility Plan Review Center (NFPRC) at Black & Veatch Special Projects Corporation, Mailstop Q6, Attn: Security Officer, 6601 College Boulevard, Overland Park, Kansas 66211. The letter should state which approved ASP the owner or operator intends to use and must include the Coast Guard Vulnerability and Security Measures Summary (CG -6025). See 33 CFR 105.410, Appendix A to Part 105, and NVIC 03-03.

Q. What is the procedure for determining the status of a facility security plan review/approval?

Ans. The National FSP Review Center, located in Kansas City KS, will send an "acknowledgement of receipt" letter to the facility owner/operator who has submitted the required facility security plan documentation in accordance with the MTSA regulations of 33 CFR Part 105. The letter contains an assigned "Activity Number" that is required for the owner/operator to log-on electronically at <http://cgmix.uscg.mil/spr> to determine the status of their security plan submission.

If a facility owner or operator is unable to utilize the electronic access or has further questions, they should contact the National FSP Review Center at 1-866-FSP-USCG (1-866-377-8724).

Q. I am one of many facility tenants leasing space at a port complex that is owned and operated by a third party. Who is responsible for providing a facility security plan (FSP) as required by the MTSA regulations, the tenant/facility operator or the port complex operator?

Ans. Whether or not a party is responsible for developing and submitting an FSP depends on the facts and circumstances of the particular situation. The regulations were designed to be flexible, so that in situations like this parties could develop an arrangement that was best suited for their needs while still complying with the performance standards established by the MTSA regulations.

Basically, it is the responsibility of each party that conducts activity in a facility regulated under part 105 to ensure that they are in compliance with the requirements of the MTSA regulations. It is advisable for all parties involved in a facility to mutually agree on roles and responsibilities. In determining who is responsible for facility security, the Coast Guard will examine the facts and circumstances to determine which party has sufficient control over the operation so as to be responsible for security. Facts and circumstances that may be considered by the Coast Guard include:

- Is there a written agreement (i.e. a lease provision) between the parties detailing security responsibilities?
- How much control does the tenant have in conducting operations?
- What are the tenant's daily operations?
- Who, before the MTSA regulations were enacted was responsible for facility security?

The Coast Guard will be aggressive in enforcement of the MTSA security regulations. It is in the best interest of tenant and landlord to clarify facility security responsibilities and then to ensure that those duties are carried out in compliance with the regulations. (Ref.: 33 CFR, Chapter 1, Subchapter H Section 105.400, Subpart D.)